

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF MISSOURI

In Re: )  
 )  
LOUIS ENRIQUE COLON ) Case No. 13-42951-drd7  
Debtor )  
\_\_\_\_\_  
 )  
LORRI WILBEE-KOBE ) Adversary No.  
Plaintiff )  
 )  
v. )  
 )  
LOUIS ENRIQUE COLON )  
Defendant )  
 )

COMPLAINT TO DETERMINE DISCHARGEABILITY OF INDEBTEDNESS  
PURSUANT TO 11 U.S.C. § 523(a)(5) and (15)

COMES NOW Plaintiff, Lorri Wilbee Kobe, by and through her counsel, and for her Complaint to declare that the debts owed by Debtor-Defendant to her are non-dischargeable pursuant to 11 U.S.C. § 523 (a)(5), and (15), states as follows:

1. This adversary proceeding is filed in connection with Debtor-Defendant's case under Chapter 7 of Title 11, now pending in this Court.
2. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§157, 1334, and 11 U.S.C. 523. Further, this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).
3. Venue is proper in this Court under 28 U.S.C. § 1408 & §1409.
4. This adversary proceeding is timely brought pursuant to Rule 4007(c) of the Federal Rules of Bankruptcy Procedure.

5. The Defendant is the Debtor in the above entitled case under Chapter 7 of the Bankruptcy Code pending in the Western District of Missouri and filed on August 2, 2013.

6. On October 19, 2009, the Circuit Court of Jackson County, Missouri, entered a Judgment and Decree of Dissolution of Marriage for Joy Caroline Colon and Louis Enrique

Colon. Said Judgment granted the parties joint legal and physical custody of their three minor children. Further, the Judgment ordered Debtor-Defendant Louis Enrique Colon to pay Joy Caroline Colon the sum of \$1,300 per month as and for child support.

7. Debtor-Defendant filed a Second Amended Motion for Modification of Judgment and Decree of Dissolution of Marriage as to Custody, Parenting Time and Child Support and Request for Expenses and a Motion for Contempt Against Joy Caroline Colon on August 16, 2012. Subsequently, Joy Caroline Colon filed a Counter-Motion to Modify Judgment and Decree of Dissolution of Marriage.

8. The indebtedness owed to Plaintiff arose out of a Judgment of Modification entered on June 3, 2013, in the matter of *Joy Caroline Colon v. Louis Enrique Colon*, Case 0916-FC04361-02, in the Circuit Court of Jackson County, Missouri, Family Court Division. Said Judgment increased the amount of child support owed by Debtor-Defendant to Joy Caroline Colon to \$1,819 per month, from the previous amount awarded of \$1,300 per month.

9. The Court found that Debtor-Defendant's income had increased since the filing of the original Judgment and Decree of Dissolution of Marriage, and that Joy Caroline Colon's income had decreased during that same period.

10. The Court further found that Joy Caroline Colon's decrease in income was a direct result of Debtor-Defendant's conduct causing her to lose four jobs since the Judgment and Decree of Dissolution of Marriage was entered. This conduct included: phoning and texting Joy Caroline Colon on a daily basis, phoning her employer directly and threatening him, and picketing Joy Caroline Colon's place of business with a sign indicating the employer "hires thieves and liars".

11. Plaintiff represented Joy Caroline Colon, Debtor-Defendant's ex-spouse in the Modification action.

12. The Judgment of Modification ordered that Plaintiff Lorri Wilbee-Kobe shall have a judgment against Debtor-Defendant in the sum of \$12,000 as and for contribution to

Petitioner Joy Caroline Colon's reasonable and necessary attorney fees and costs, to be paid within sixty days of the entry of the Judgment by the Court.

13. The Judgment of Modification notes that the attorneys fees awarded to Plaintiff Lorri Wilbee-Kobe are in the nature of additional support for the children<sup>1</sup> and therefore, are not intended to be dischargeable in bankruptcy.

14. Plaintiff's counter-motion to Modify requested that the Court make the increase in child support retroactive, but that the Court declined to do so "in light of the Court's decision as to attorneys' fees". This shows the Court's intention to make the award of attorneys' fees in the nature of support.

15. 11 U.S.C. § 523(a)(15) states:

(a) A discharge under Section 727... of this title does not discharge an individual debtor from any debt-  
(15) to a spouse, former spouse, or child of the debtor and not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation agreement, divorce decree or other order of a Court or record or a determination made in accordance with State or territorial law by a governmental unit.

16. R.S.MO. § 452.335 permits the Court to award attorneys' fees to either party in connection with maintaining or defending any proceeding regarding dissolution of marriage and matters related to child support.

17. 11 U.S.C. § 523(a)(5) excepts from discharge debts for domestic support obligations.

18. Attorneys' fees are treated as excepted from discharge by bankruptcy courts pursuant to both 11 U.S.C. § 523(a)(15) and 11 U.S.C. § 523(a)(5).

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<sup>1</sup> Joy Caroline Colon and Debtor-Defendant Louis Enrique Colon have three children together, all minors.

19. Plaintiff Lorri Wilbee-Kobe has been forced to incur additional expenses and retain counsel in connection with this proceeding which are recoverable herein.

WHEREFORE, Plaintiff Lorri Wilbee-Kobe prays this Court enter judgment determining that the prior judgment of the Circuit Court of Jackson County, Missouri, awarding the sum of \$12,000 is excepted from discharge pursuant to 11 U.S.C. § 523(a)(5) and 11 U.S.C. § 523(a)(15), and for such further relief as it finds appropriate under the circumstances, including an award of attorneys' fees and costs.

Respectfully Submitted,

KRIGEL & KRIGEL, P.C.

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